In the High Court of Judicature at Madras

Dated: 05/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Criminal Revision Case No.242 of 2002
and
Crl.M.P.No.1247 of 2002

Munusami .. Petitioner

-Vs-

1. Smt. Viola
2. Minor Arul .. Respondents

Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure against the Order passed by the learned Judicial Magistrate No.I, Thiruvellore dated 13.06.2000 made in M.C.No.2 of 1997.

!For petitioner : Mrs. P.V. Rajeswari

^For respondents : Mr. P.N. Prakash

:ORDER
Aggrieved by the order of the learned Judicial Magistrate No.I, Thiruvellore dated 13.06.2000 made in M.C.No.2 of 1997, granting maintenance at the rate of Rs.500/- in favour of the first respondent and Rs.400/- in favour second respondent herein, the petitioner has preferred the above revision.

2. According to the respondents, the first respondent is a wife and the second respondent is a minor son born to the petitioner herein. Initially, at their instance, maintenance was granted at the rate of Rs.300/- per month for the first respondent and Rs.200/- per month for the second respondent. Since the amount awarded is not adequate and unable to sustain their livelihood and taking note of the fact that the petitioner herein is getting a salary of Rs.4,000/- per month as a permanent employee in the Taluk Office, Tirutani, the respondents filed the present petition, seeking enhancement of the maintenance at the rate of Rs.500/- each.

3. Before the Court below, the first respondent herein - wife was examined as P.W.1 and the petitioner herein - husband as R.W.1. No other witness or document pressed into service. Considering the fact that due to escalation of price and cost of living and also of the fact that the second respondent herein is in need of more money for his studies, taking note of the

admission of R.W.1 in his cross examination that he was getting a salary of Rs.3,300/- per month and there is no other person depending on him, enhanced the maintenance amount from Rs.300/- to Rs.500/- to the first respondent and from Rs.200/- to Rs.400/- to the second respondent.

4. Mrs. P.V. Rajeswari, learned counsel appearing for the petitioner by drawing my attention to the fact that the petitioner had secured an ex parte order of divorce in 1989, in the absence of consideration of the said aspect, the present order of the learned Judicial Magistrate, enhancing the maintenance cannot be sustained.

5. On the other hand, Mr. P.N. Prakash, learned counsel for the respondents would contend that in the absence of any separate application by the petitioner either for modification of the order of maintenance on the basis of decree for divorce, the same cannot be considered in the present application filed by the respondents for enhancement of the maintenance.

6. I have carefully considered the rival submissions.

7. There is no dispute that on the earlier application filed by the respondents, after considering the rival contentions, the Court below has granted maintenance at the rate of Rs.300/- and Rs.200/- respectively in favour of the respondents. In the present application, on the plea that the amount granted is insufficient for them, prayed for higher amount. No doubt, in the counter statement filed by the petitioner herein before the learned Judicial Magistrate, there is a reference regarding the ex parte order of divorce and also produced a certified copy of the said order. By pointing out the order passed by the competent Court, granting ex parte order of divorce, learned counsel for the petitioner would contend that this aspect has not been considered by the learned Judicial Magistrate and the matter may be remitted to the Court below for fresh consideration. I am unable to appreciate the said contention for the following reasons.

8. As stated earlier, I am concerned with the subsequent order passed by the learned Judicial Magistrate enhancing the maintenance at the rate of Rs.500/- and Rs.400/- per month respectively in favour of the respondents. If there is any subsequent development in the order of the Civil Court / Family Court, it is always open to the parties to file an appropriate petition for modification of the same. Admittedly, the petitioner herein has not filed such petition. Accordingly, the learned Judicial Magistrate is perfectly right in not considering the said aspect in the application filed by the wife and minor son for enhancement of maintenance. Even otherwise, a woman, after divorce, becomes a destitute and if she cannot maintain herself or remains unmarried, the man, who once her husband continues to be under a statutory duty and obligation to provide maintenance to her. The above view of mine is fortified by a decision of the Hon'ble Supreme Court in the case of Rohtash Singh vs. Ramendri reported in 2000 Crl.L.J. 1498. The same view has been expressed by A. Ramamurthi,J., in the case of Rajendiran vs. Thamizharasi reported in 2001 (45) Madras Law Journal (Criminal) 739. Accordingly, I reject the contention raised by the counsel for the petitioner.

9. The only other thing is to be considered is, whether the learned Judicial Magistrate is justified in enhancing the maintenance, i.e., from Rs.300/- to Rs.500/- and Rs.200/- to Rs.400/- per month respectively?
10. In this regard, it is the grievance of P.W.1 that the amount granted earlier, namely Rs.300/- and Rs.200/- respectively, is inadequate and not sufficient for their day to day living and education. Though R.W.1 has stated that the respondents are getting income of Rs.70 /- and Rs.50/- respectively by doing cooli work, in the light of the assertion of P.W.1, I am unable to accept the claim of R.W.1. It is also to be noted that R.W.1 is employed as an Office Assistant in the Taluk Office, Tirutani and he is working in a permanent post. In his cross examination, he has admitted that he his getting a salary of Rs.3,300/- per month and no one is depending on him. In such a circumstance and in the light of the grievance expressed by P.W.1, I am of the view that the learned Judicial Magistrate is fully justified in enhancing the maintenance from Rs.300/- to Rs.500/- and Rs.200/- to Rs.400/- in favour of the respondents.

In the light of what is stated above, I do not find any ground for interference with the order of the learned Judicial Magistrate. Consequently, the revision fails and the same is dismissed.

In view of the dismissal of the main revision, Crl.M.P.No.1247 of 2 002 is also dismissed.

Index:Yes
Internet: Yes

To
1.The Judicial Magistrate No.I
Thiruvellore.

2.The Judicial Magistrate No.I
Thiruvellore through the Chief Judicial Magistrate.